

OPEN SESSION AGENDA ITEM

702 DECEMBER 2017

DATE: November 29, 2017

TO: Members, Board of Trustees

FROM: James J. Chang, Assistant General Counsel

SUBJECT: Agreements Relating to Separation of the Sections from the State Bar

EXECUTIVE SUMMARY

Following the Board of Trustees' November 2017 instruction to staff to negotiate agreements related to the separation of the Sections from the State Bar, this item provides an update on the status of those negotiations and attaches the discussion drafts of the Memorandum of Understanding and Employee Leasing Agreement for the Board's review. This item seeks the Board's approval for staff to finalize and execute these agreements.

BACKGROUND

At its November 3, 2017, meeting, the Board of Trustees instructed staff to finalize agreements relating to the separation of the Sections from the State Bar into a new nonprofit corporation to be called the California Lawyers Association ("CLA").

The three agreements are (1) a Memorandum of Understanding detailing the terms of separation and establishing a framework for future collection of CLA membership dues by the State Bar; (2) an employee leasing agreement allowing State Bar employees to support CLA during a six-month to one-year transition period; and (3) an office lease agreement under which CLA, as a third-party tenant, will rent a portion of the current Office of Education space from the State Bar.¹

DISCUSSION

Memorandum of Understanding

Attachment A to this Agenda Item is the current draft of the Memorandum of Understanding now being finalized in discussions between State Bar staff and the Council of Sections. The MOU memorializes the State Bar's statutory obligations to transfer to CLA the Sections' financial reserves, intellectual property, and contracts entered into by the State Bar on behalf of the Sections.

¹ The office lease agreement will be discussed separately in closed session pursuant to Cal. Govt. Code § 11126(c)(7). See Item 7002 December 2017.

SB 36 requires the State Bar to collect fees for CLA provided that the State Bar determines that (1) CLA is continuing to maintain a governance structure that provides for equal representation of each Section on the CLA board of directors; and (2) CLA is continuing to serve a public purpose by providing low-cost MCLE and information to the State Bar.

As discussed at the November 2017 Board meeting and approved by the Board at that time, State Bar staff have proposed that the CLA commission an annual performance audit certifying CLA's compliance with the statutory requirements regarding governance structure and provision of low-cost MCLE. The Council of Sections has objected to this proposal and instead requested that CLA itself certify and provide information evidencing its compliance.

State Bar staff are continuing discussions with the Council of Sections leadership regarding how the State Bar will determine whether CLA is in compliance with its statutory obligations, including in a scheduled teleconference on November 29, 2017, and will report to the Board at its December 1, 2017, meeting on the current status of these discussions (this is the only issue for which staff anticipates potential material developments between the time of posting of this item and the Board meeting).

Employee Leasing Agreement

Attachment B to this Agenda Item is the current draft of the Employee Leasing Agreement now being finalized with the Council of Sections. In response to a request by the Council of Sections, the State Bar has offered to lease its current Office of Education employees to support CLA during a six-month to one-year transition period. The employees' participation is voluntary and the employees would remain State Bar employees, receiving their ordinary compensation and benefits directly from the State Bar, with the costs to be reimbursed by CLA. Staff are finalizing negotiation of this agreement.

FISCAL/PERSONNEL IMPACT

There will be minimal fiscal impact from these agreements as SB 36 requires that CLA pay to the State Bar the actual costs of services provided by the State Bar.²

The employee leasing agreement will permit up to 8 current State Bar employees to support CLA for a six-month to one-year period. These employees currently support the Sections, which will no longer exist within the State Bar, so there will be no impact to other State Bar departments resulting from the State Bar temporarily leasing these employees to CLA.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

The MOU will be added to the Board Book when adopted.

² The fiscal impact of the office lease agreement, which would be likely to generate substantial revenue, will be discussed separately in Item 7002 December 2017.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal: 1. Successfully transition to the “new State Bar”— an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective: a. Manage and support the transition of the State Bar Sections to a new standalone entity.

RECOMMENDATION

Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees authorizes staff to finalize and execute the Memorandum of Understanding and Employee Leasing Agreement with the California Lawyers Association.

ATTACHMENT(S) LIST

- A.** Current Discussion Draft of Memorandum of Understanding
- B.** Current Discussion Draft of Employee Leasing Agreement

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE STATE BAR OF CALIFORNIA AND
CALIFORNIA LAWYERS ASSOCIATION**

This Memorandum of Understanding (hereinafter "MOU") is made and entered into by and between The State Bar of California, a public corporation with its principal place of business at 180 Howard Street, San Francisco, California 94105 and the California Lawyers Association ("CLA"), a mutual benefit corporation with its principal place of business at 180 Howard Street, Suite 410, San Francisco, California 94105.

WHEREAS, recently enacted legislation, Senate Bill 36 (2017) ("SB 36"), mandates the separation of the Sections from the State Bar into an independent private non-profit corporation, to be called the California Lawyers Association ("CLA");

WHEREAS, SB 36 provides that the State Bar shall transfer the Sections' financial reserves, contracts, and intellectual property assets to CLA;

WHEREAS, SB 36 provides that the State Bar shall collect membership dues on behalf of the Association provided that the State Bar determines that CLA is continuing to comply with certain requirements set forth in SB 36;

NOW, THEREFORE, the State Bar and CLA agree to this Memorandum of Understanding:

GENERAL PROVISIONS

1. State Bar Sections to Become California Lawyers Association

The State Bar has incorporated CLA and will transfer control of CLA no later than January 1, 2018 to a board of directors designated by the State Bar Council of Sections. The State Bar recognizes CLA as the entity defined as the "Association" in Article 3 of SB 36 (2017) (amended Cal. Bus. & Prof. Code § 6056(a)).

2. Transfer of Sections Financial Assets to CLA

On or before January 31, 2018, the State Bar shall remit to CLA the "Transfer Amount", which is defined as the remaining balance in the Sections funds less withholdings for known expenses and liabilities previously incurred by the State Bar Sections that have not been yet been fully paid ("Known Liabilities"). The State Bar will concurrently provide CLA with an accounting of and documentation relating to the Known Liabilities. The State Bar will provide CLA with an accounting that specifies which funds are attributable to each individual section of CLA.

CLA acknowledges that State Bar's 2017 year-end accounting is subject to adjustment during annual audit by the State Bar's independent financial auditor, which takes place in the ordinary course in the spring of each year and will conclude no later than May 31, 2018. Promptly after the annual financial audit is completed, the State Bar will inform CLA of any variance in the Sections balances between the Transfer Amount and the audited amounts and will provide CLA a final

accounting of the monies previously withheld to cover Known Liabilities. In the event of a variance resulting in additional monies owed to CLA by the State Bar, the State Bar will pay the variance amount to CLA promptly. In the event of a variance indicating that the Transfer Amount exceeded the amount actually due to CLA, CLA will pay the variance amount to the State Bar promptly. No interest will be charged to either party as a result of any variance between the Transfer Amount and audited amounts.

In the event that the parties have a dispute regarding the amount of funds to be transferred by the State Bar to CLA pursuant to this section, the parties agree that such dispute shall be resolved through binding arbitration. Either party may serve notice to the other party on or after January 31, 2018, to commence arbitration proceedings. The parties agree that the arbitration shall be governed by Cal. Code Civ. Proc. § 1282 et seq., except that the selection of an arbitrator and the allocation of costs will be governed by amended Cal. Bus. & Prof. Code § 6056.3(f), which states: “If the parties cannot agree on a neutral arbitrator, each shall select a neutral arbitrator and the two neutral arbitrators shall select a single neutral arbitrator to determine the amount. The neutral arbitrator chosen to oversee the matter may hire an auditor to assist in this task. The fees charged by the arbitrator, including any auditor fees, shall be borne equally by the State Bar and the Association.” The State Bar shall transfer to CLA the undisputed portion of the Transfer Amount no later than January 31, 2018.

3. Assignment of Sections Contracts to CLA

On or before January 1, 2018, the State Bar will assign to CLA contracts previously entered into by the State Bar on behalf of the State Bar Sections for services to be rendered or events occurring on or after January 1, 2018, transferring to CLA all of the State Bar’s rights and obligations under those contracts. The State Bar will provide to CLA an inventory identifying each contract, a copy of each contract, and a copy of each assignment notice.

4. Transfer of Intellectual Property

No later than January 1, 2018, The State Bar will transfer to CLA all intellectual property created by the State Bar Sections, including ownership rights in publications, educational materials, online education, membership lists of section members, and products. On or before [December 15, 2018], the State Bar and CLA will execute a separate asset transfer agreement further detailing terms.

5. Collection of CLA Membership Fees by the State Bar

The State Bar shall collect fees for CLA by including an option on the annual licensing fee statement sent to California attorneys, in a manner similar to that in which the State Bar has historically collected fees for the State Bar Sections, provided that the CLA submits to the State Bar no later than September 1 of each year the results of a performance audit conducted by an independent certified public accountant in conformity with generally accepted auditing standards that certifies that CLA is in compliance with the statutory requirements listed in subsections (a) and (b) below. The audit report must describe with particularity the methodology used in the

audit and the information evaluated and obtained by the auditor that informed the audit's conclusion. CLA must commission and pay for the audit.

CLA must also provide to the State Bar no later than September 1 of each year the schedule of fees for membership in CLA Sections to be included on the State Bar's annual licensing fee statement.

a. Governance Structure

The performance audit must certify that CLA maintains and adheres to a governance structure that complies with Section 24 of SB 36 (amended Cal. Bus. & Prof. Code § 6056 (b)), which states:

“The Association shall be governed in accordance with the bylaws of the Association, which shall ensure that all of the [CLA] Sections and the California Young Lawyers Association are adequately represented and are able to make decisions in a fair and representative manner that complies with all provisions of state and federal law governing private nonprofit corporations organized under Section 501(c)(6) of the Internal Revenue Code. The bylaws of the Association shall ensure that the governing board of the Association includes one representative of each of the 16 sections of the State Bar [CLA] Sections and one representative from the California Young Lawyers Association. The bylaws shall ensure that each of these 17 governing board members have equal voting power on the governing board. The bylaws shall ensure that the governing board may terminate individual sections or add individual sections by a two-thirds vote of the governing board.”

No later than March 30, 2018, the State Bar's Executive Director (or her designee), acting under the authority of the State Bar Board of Trustees, will review the bylaws and governance structure of CLA and will provide CLA a written determination (“Initial Determination”) as to whether CLA is in compliance with Cal. Bus. & Prof. Code § 6056 (b).

If the initial determination certifies that CLA is then in compliance with Cal. Bus. & Prof. Code § 6056 (b), future performance audits conducted under this section may refer to the initial determination as a factor in determining whether CLA remains in compliance if the bylaws and governance structure have not changed materially from the bylaws and governance structure then in effect at the time of the State Bar's initial determination; however, the performance audit must still determine whether CLA is in practice operating in a manner consistent with the CLA by-laws and governance rules and make an independent determination as to whether CLA continues to ensure that all Sections are “adequately represented” and that the governance structure ensures that the Sections “are able to make decisions in a fair and representative manner.”

b. Legal Education

The performance audit must certify that CLA is continuing to provide legal education on the terms stated in Section 27 of SB 36 (amended Cal. Bus. & Prof. Code § 6070 (d)), which states:

“The Association shall provide and encourage the development of low-cost programs and materials by which members of the State Bar may satisfy their continuing education requirements. Special emphasis shall be placed upon the use of internet capabilities and computer technology in

the development and provision of no-cost and low-cost programs and materials. Towards this purpose, as a condition of the State Bar's collection of membership fees on behalf of the Association pursuant to subdivision (b) of Section 6031.5, the Association shall ensure that any member possessing or having access to the Internet or specified generally available computer technology shall be capable of satisfying the full self-study portion of his or her MCLE requirement at a cost of twenty dollars (\$20) per hour or less."

c. CLA Membership Fees Held Separately in Trust

Beginning January 1, 2018, all monies received by the State Bar for membership in CLA will be placed within a separate account within the State Bar's general ledger. The State Bar agrees to hold those funds in trust for the benefit of CLA.

6. Information from Association to the State Bar

Section 24 of SB 36 (2017) (amended Bus. & Prof. Code § 6056 (f)(2)) requires CLA to provide "expertise and information to the State Bar, as requested."

Pursuant to that Section, the State Bar requires that CLA provide the following information to the State Bar: (1) the performance audit results described in Section 5 of this MOU; and (2) no later than September 1 of each year, a letter from the President of the CLA to the Chair of the State Bar Board of Trustees describing generally the status of CLA and activities of CLA over the preceding year.

7. Remittance of CLA Membership Fees

The State Bar will remit funds collected on behalf of CLA to CLA as soon as practicable and no less than once monthly unless otherwise agreed to in writing between the State Bar and CLA.

8. Costs of Collection

Section 21 of SB 36 (2017) (amended Cal. Bus. & Prof. Code § 6031.5(b)) mandates that CLA "shall pay for the actual costs of the collection" of CLA's membership fees by the State Bar.

The State Bar's current actual cost of collecting CLA's membership fees is the total amount of voluntary contributions collected in support of CLA in relation to the total amount of funds collected from the annual licensing fee statement applied against the annual cost of the State Bar's Attorney Regulation & Consumer Resources and Member Billing Departments. The calculation of the reimbursement ratios to be applied for year 2018 will be based on 2017 contributions and costs. Thereafter, calculation of each subsequent year's reimbursement will use the prior year's ratios.

If the State Bar's actual costs of collection changes in the future, the State Bar will give notice to CLA of the State Bar's revised methodology for determining actual costs no later than December 1 of the year preceding the year for which the revised formula will be in effect. Such notice will be deemed incorporated into this agreement.

The State Bar will deduct its costs from the funds remitted to CLA and provide an accounting.

9. CLA Membership Records

To ensure that CLA receives CLA Section membership information from the State Bar in a timely manner and a usable format, the State Bar will continue to maintain CLA Section membership information in the State Bar's internal attorney information database and will transmit that information electronically to CLA's membership database, InfusionSoft, using the currently existing interface that links the two systems. The State Bar will be responsible for updating the interface if the State Bar changes to a different internal attorney information database in the future.

CLA is responsible for maintaining its own membership database. If CLA changes its database system from InfusionSoft or causes any other changes that necessitate an update to the interface, CLA will be responsible for updating or developing a new interface to the State Bar's then-existing attorney information database, and CLA will be responsible for bearing any associated costs.

The State Bar will continue to identify membership of CLA Sections as an attribute on public attorney profiles on the State Bar website with a notation that CLA is an independent organization and is not part of the State Bar. CLA acknowledges that the State Bar is a government entity subject to the California Public Records Act, and that records of membership in CLA Sections maintained by the State Bar may be disclosable to the public.

10. Partnerships

The State Bar will provide assistance upon request in support of CLA's efforts to join the American Bar Association (ABA) House of Delegates and to establish a partnership with Continuing Education of the Bar (CEB), including by writing letters of support and making State Bar leadership personnel reasonably available to discuss the State Bar's support of CLA with officials at those agencies.

11. Effect of Statutory Amendment

This MOU will remain in effect so long as the provisions of the California Business and Professions Code requiring the collection of CLA fees by the State Bar on behalf of CLA, provided that CLA performs the obligations required by statute, remain operative.

In the event of any material amendments to the sections of the California Business and Professions Code cited in Section 5 of this MOU or any statutory changes that alter the duties or obligations of CLA or the State Bar, such statutory changes will supersede any provisions of this MOU that are in conflict with the new or revised statutes. In addition, the State Bar and CLA must meet and confer no later than 60 days following the date that the bill is signed into law by the governor to amend this MOU.

12. Amendments to this MOU

No amendments, alteration or variation of the terms of this MOU will be valid unless made in writing and signed by both of the parties herein.

Either party may request to meet and confer for the purpose of seeking modifications to this MOU by delivering written notice the other party under Section 14. The meet and confer must occur within 30 days of the notice.

13. Entire Agreement

This MOU supersedes any and all other agreements pertaining to the subject matter of this MOU, either oral or written, which may exist between the parties, and contains all of the covenants and agreements between the parties as of the last date written below. By signing below, each party acknowledges that no representations, inducements, promises or agreements which are not embodied herein have been made by any party and that no agreement, statement or promise pertaining to mandatory duties and obligations under SB 36 not contained herein will be binding on the parties.

14. Notice

Any notices to be given by either party to the other shall be in writing, either by personal delivery, email, or overnight delivery. Notices delivered personally shall be deemed received as of actual receipt; emailed notice shall be deemed received immediately unless a rejection notice is received; and overnight delivery shall be deemed received as of the next business day. Mailed notices to the State Bar will be addressed to General Counsel, 180 Howard Street, San Francisco, California 94105. Emailed notices to the State Bar will be addressed to Vanessa.holton@calbar.ca.gov. Mailed notices to CLA will be addressed to Executive Director, 180 Howard Street, Suite 410, San Francisco, California 94105. Emailed noticed to CLA will be addressed to [_____]. Each party may change the address by written notice in accordance with this Section.

15. Jurisdiction and Venue

This MOU is deemed to have been made and entered into by the parties at San Francisco, California, and will be construed according to the laws of the State of California. Any litigation arising out of this agreement will be filed in the appropriate court in the county or judicial district where either the State Bar or CLA's principal place of business is located, except that disputes arising out of Section 2 of this MOU shall be resolved in accordance with the procedures specified in that Section.

16. Titles

The titles used herein are not part of this MOU and are included solely for convenience and have no bearing upon and do not in any way limit the application of the terms and conditions of this MOU.

17. Severability

If any provision of this MOU is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

18. Assignment

Neither party shall assign all or any partial rights or obligations under this MOU.

19. Waiver

No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. Any consent to or waiver of a breach by any party to the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

20. Authority

Each party hereby represents and warrants that it has full power and authority to enter into and perform its respective obligations under this agreement and that the person signing this MOU has been properly authorized and empowered to enter into this MOU. The Council of State Bar Sections, as the predecessor to CLA, has full power and authority to agree to and bind CLA to this MOU.

21. Counterparts

This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the last day and year written below.

THE STATE BAR OF CALIFORNIA

CALIFORNIA LAWYERS ASSOCIATION
[Council of State Bar Sections, as Predecessor
to CLA]

By: _____

Leah Wilson, Executive Director

By: _____

Dated: _____

Dated: _____

EMPLOYEE LEASING AGREEMENT

This EMPLOYEE LEASING AGREEMENT (“Agreement”) is entered into as of the last date signed below, and is effective as of January 1, 2018, by and between the California Lawyers Associations (“CLA”), a California mutual benefit corporation, and The State Bar of California (“State Bar”), a California public corporation.

RECITALS

WHEREAS, recently enacted legislation, Senate Bill 36 (2017) (“SB 36”), mandates the separation of the Sections from the State Bar into an independent private non-profit corporation, which will be called the California Lawyers Association ("CLA");

WHEREAS, SB 36 permits the State Bar to provide services to CLA provided that CLA reimburses the State Bar for the full actual costs of those services;

WHEREAS, the Council of State Bar Sections, as predecessor to CLA, has requested that the State Bar lease some or all State Bar Office of Education employees to CLA to assist it during the temporary transition period and the State Bar is agreeable to leasing Office of Education employees to CLA on the terms stated herein;

NOW, THEREFORE, in consideration for the foregoing recitals and the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Leased Employees. During the term of and subject to the provisions of this Agreement, the State Bar shall lease to CLA the services of its current State Bar Education employees who desire to work with CLA (“Leased Employees”).

- (a) Exhibit A identifies each and every State Bar Office of Education Employee currently eligible to be leased to CLA and each employee’s job position.
- (b) The State Bar represents that each Leased Employee is currently employed within the State Bar’s Office of Education and in that capacity has gained experience and knowledge of the State Bar Sections and the administrative duties required to support the Sections. The specific scope of each Leased Employee's experience and knowledge depends upon their particular classification and job duties.
- (c) The parties acknowledge that the State Bar will lease to CLA only those Leased Employees among those eligible and named in Exhibit A and that

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other than from among those Leased Employees, CLA has no right to lease any other State Bar employee.

- (d) CLA acknowledges that those Office of Education employees who agree to become Leased Employees for CLA do so voluntarily, and that such Leased Employees have the right to end their voluntary participation at any time at their option.
- (e) CLA acknowledges that the State Bar will not replace any Leased Employee who voluntarily elects to end his or her participation or whose employment with the State Bar ends, and that the State Bar shall not be liable to CLA for any damages or losses resulting therefrom.

2. Noninterference with Leased Employees Rights. The parties acknowledge and agree that Leased Employees retain all rights granted to them under state and federal law and the State Bar's policies, rules, regulations and memoranda of understanding ("State Bar Rights"), including but not limited to any memorandum of understanding existing between the State Bar and the employees' exclusive bargaining representative. CLA agrees that it will not interfere with or otherwise impair Leased Employees exercising State Bar Rights and further agrees that it will cooperate with the State Bar in ensuring Leased Employees' enjoyment of their State Bar Rights.

3. Control of Work. During the term of and subject to the provisions of this Agreement, CLA has the right of direction and control over Leased Employees and their work. CLA agrees that it must and will exercise control over the work of Leased Employees through the State Bar's Director of Education, Patricia Horan, a Leased Employee. Despite CLA's control over the day-to-day work of Leased Employees, the State Bar retains the right to evaluate, discipline and terminate Leased Employees.

4. CLA's Compliance with Laws. As part of this Agreement, CLA agrees and acknowledges:

- (a) CLA shall comply with the Safety Orders of Cal-OSHA and all other health and safety laws, regulations, ordinances, directives and rules applicable to the Leased Employees or their place of work. The State Bar and the State Bar's workers' compensation carrier shall have the right to enter and inspect CLA's premises to ensure that Leased Employees are not exposed to an unsafe workplace.

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- (b) CLA shall comply with all applicable employment-related laws and regulations, including but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act of 1963; the Family Medical Leave Act, the California Fair Employment and Housing Act, the California Family Rights Act, and any other federal, state or local law, statute, ordinance, order, regulation policy or decision that apply to Leased Employees.
- (c) CLA shall report to the State Bar any injury to any Leased Employee of which it has knowledge promptly and no later than within twenty-four (24) hours of acquiring such knowledge. CLA also agrees to cooperate with the State Bar and its workers' compensation carrier regarding reporting, investigating, adjusting and resolving workplace injury claims.

5. Payment Terms. On a mutually agreeable schedule, but no less often than each applicable payroll period, the State Bar shall issue an invoice to CLA specifying the amount the State Bar is to be reimbursed (the "Reimbursable Amount") for the then concluding payroll period for the Leased Employees.

6. Reimbursable Amount. The term "Reimbursable Amount" is an amount equal to the following costs paid or expenses accrued by the State Bar for the Leased Employees during such period of employment by the State Bar of the Leased Employees while in service to CLA:

- (a) the salaries and wages for each Leased Employee, as may be adjusted from time to time in accordance with the State Bar's compensation policies;
- (b) the State Bar's share of social security taxes, Medicare taxes, California state withholdings, and all other payroll taxes;
- (c) premiums, contributions and other amounts paid by the State Bar on behalf of Leased Employees for coverage by any existing health, dental, vision insurance plans, sponsored pension plans or other benefit plans;
- (d) premiums for workers' compensation insurance for the Leased Employees;
- (e) any vacation pay, holiday pay, sick pay, overtime pay, any other benefits paid, accrued or otherwise provided to Leased Employees during the term

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of this Agreement, including but not limited to any severance payments paid to any Leased Employee under any voluntary Reduction-in-Force Agreement such as any Leased Employee may have with the State Bar or under the State Bar's Rules and Regulations pertaining to the Employment of Executive Employees.

7. Responsibility for Compensation/Reimbursement. During the term of and subject to the provisions of this Agreement, the State Bar shall be solely responsible for each Leased Employee's compensation and benefits. CLA's sole responsibility shall be to reimburse the State Bar the Reimbursable Amount for the period that the Leased Employees provide services to CLA.

8. Methods of Reimbursement. CLA shall pay to the State Bar the amount of each invoice within 30 days of that invoice being issued by the State Bar. In the event of failure of CLA to timely pay invoices as they become due, CLA hereby authorizes the State Bar, in its sole discretion, to deduct the Reimbursement Amount associated with each unpaid invoice from CLA membership fees that the State Bar collects on behalf of CLA pursuant to the separate Memorandum of Understanding between the State Bar and CLA.

9. Timekeeping. Leased Employees shall report time worked for CLA in the manner consistent with their employment with the State Bar. To the extent that any Leased Employee's time is compensated on an hourly basis, the State Bar shall instruct such non-exempt Leased Employees to record accurately and report all hours spent providing services to CLA and the State Bar will maintain such records as required under applicable laws. CLA shall be entitled to keep its own records of such Leased Employees' time. Such CLA records will be available to the State Bar for inspection. To the extent that there are discrepancies between the time submitted by a Leased Employee whose services were billed on an hourly basis and the time calculated by CLA, the parties shall review their respective records and determine the actual time spent by the Employee in providing services to CLA.

10. Insurance. CLA will provide and keep in full force and effect during the term of this Agreement, at CLA's own cost and expense, the following insurance policies for the joint benefit of CLA and the State Bar:

- (a) **Commercial General Liability Insurance** with a general aggregate limit of at least One Million Dollars (\$1,000,000.00).
- (b) **Non-Owned/Hired Automobile Liability Insurance** with at least One Million Dollars (\$1,000,000.00) combined single limit.

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- (c) **Umbrella Liability Insurance**, in an amount not less than Five Million Dollars (\$5,000,000).
- (d) **Employment Practices Liability Insurance** in an amount not less than Five Million Dollars (\$5,000,000).
- (e) **Directors & Officers Liability Insurance** in an amount not less than Five Million Dollars (\$5,000,000).

All insurance required to be maintained pursuant to this Agreement will name the State Bar, its Board of Trustees, directors, officers, and employees, as additional insureds, will be primary and non-contributing with respect to any other insurance maintained by or available to the State Bar, and will be with carrier(s) acceptable to the State Bar.

CLA will deliver to the State Bar offices at 180 Howard Street, San Francisco, CA 94105, Attn: Risk Management, certificates of insurance evidencing compliance with the requirements in this Article within ten (10) days from the effective date of this Agreement. Each certificate will provide that the issuing company (the insurer) will endeavor to mail to the State Bar thirty (30) days' prior written notice of any cancellation of the policies or reduction in coverage or amount. In addition, notwithstanding any notices sent to the State Bar by the insurer, CLA will immediately notify the State Bar when it becomes aware of any cancellation or material change in the amounts of or type of coverage of the insurance policies required. If CLA fails to secure and maintain insurance policies complying with the provisions of this Agreement, the State Bar may, at its discretion, purchase the required insurance coverage with CLA responsible to the State Bar for all associated costs, or terminate this Leasing Agreement immediately. In the event the State Bar must purchase the required insurance coverage, it may in its discretion deduct the associated costs from CLA membership fees that the State Bar collects on behalf of CLA pursuant to the separate Memorandum of Understanding between the State Bar and CLA.

11. Term/Termination. This Agreement shall become effective on January 1, 2018, and continue for a period of six (6) months until June 30, 2018. CLA may extend the term of this Agreement for one additional six (6) month term by providing notice to the State Bar no later than April 30, 2018. This Agreement may be terminated earlier in the event any of the following occur:

- (a) CLA fails to pay the Reimbursement Amount required under this Agreement. Prior to terminating this Agreement because of CLA's failure to pay, the State Bar shall first provide CLA with a notice of the delinquency, and five calendar days after the date of such notice as an opportunity to cure.

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- (b) If either party materially breaches this Agreement, the non-breaching party shall give the breaching party emailed notice of its intent to terminate this Agreement for such breach. The breaching party then shall have five (5) calendar days in which to cure the breach. If the breach is not cured at the expiration of the fifth calendar day from the date of the notice, the non-breaching party shall have the right to immediately terminate the Agreement.
- (c) The parties may mutually agree in writing to terminate this Agreement for any reason.
- (d) There are no longer any Leased Employees available to perform the work, in which case the Agreement will terminate on the last day of work of the last Leased Employee available to perform the work.

12. Indemnification by CLA. CLA agrees to indemnify, defend and hold the State Bar, its agents, representatives or employees harmless from and against all claims, liabilities, damages, attorney fees, costs and expenses that (i) arise out of CLAs breach of its obligations under this Agreement, or (ii) that arise from any act or omission on the part of CLA, its agents, representatives, employees, volunteers, contractors, business invitees, taken or not taken with respect to the Leased Employees during the term of this Agreement. This indemnification provision shall survive the expiration or other termination of this Agreement.

13. No Liability to State Bar. CLA acknowledges that the State Bar cannot guarantee that the Leased Employees will be available through the full term of this Agreement. CLA agrees that the State Bar shall not be held liable for any reduction in services or any resulting consequential damages to CLA arising from the absence of any or all Leased Employees as a result of (i) any or all Leased Employees no longer wishing to temporarily work for CLA; (ii) a natural disaster that impairs Leased Employees from reporting to their CLA workplace; (iii) a labor work stoppage; (iv) an act of terrorism or war. CLA agrees that it will bear the cost and be responsible for any damages to its operations resulting from Leased Employees leaving State Bar employment, being reassigned to other State Bar work, or otherwise being unavailable to support CLA.

14. Entire Agreement. This Agreement, including its exhibits (all of which are incorporated herein by this express reference) represents the entire understanding of the parties with respect to the subject matter hereof, and shall not be amended, altered or changed except by a written agreement signed by the parties hereto.

15. Choice of Laws. This Agreement is deemed to have been made and entered into in the State of California, and will be construed according to the laws of the State of California.

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16. Dispute Resolution. Any dispute arising out of this agreement shall be resolved in binding arbitration conducted by JAMS in San Francisco by an arbitrator with experience in labor and employment matters selected according to the JAMS Comprehensive Arbitration Rules and Procedures. The arbitrators' expenses and fees will be borne equally by the parties. Each party will be responsible for its own attorney's fees.

17. Modifications. No amendment, alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the parties.

18. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19. Authority to Contract. Each party represents and warrants that it has full power to enter into and perform its respective obligations under this Agreement and that the person signing this Agreement has been properly authorized and empowered to enter into this Agreement. Each party acknowledges that it has read, understands, and will be bound by this Agreement.

20. Notices. Whenever under the terms of this Agreement written notice is required or permitted to be given by any party to any other party, such notice shall be in writing and shall be deemed to have been sufficiently given if transmitted by electronic mail ("email"). The parties may also give notice via personal delivery, overnight courier service, U.S. Mail, electronic facsimile, at the following addresses:

The State Bar of California
Office of General Counsel
180 Howard Street
San Francisco, CA 94105
Facsimile: 415-538-2321

California Lawyers Association
180 Howard Street, Suite 410
San Francisco, CA 94105

[Remainder of Page Intentionally Blank]

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which together will constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile, email or any other reliable means will be effective for all purposes as delivery of a manually executed original counterpart. Either party may maintain a copy of this Agreement in electronic form. The parties further agree that a copy produced from the delivered counterpart or electronic form by any reliable means (for example, photocopy, facsimile or printed image) will in all respects be considered an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date signed below.

CALIFORNIA LAWYERS ASSOCIATION

By: _____

Name:

Title:

Date: _____

THE STATE BAR OF CALIFORNIA

By: _____

Name:

Title:

Date: _____

EXHIBIT A

ELIGIBLE LEASED EMPLOYEE LIST

Name	Title
HORAN, PATRICIA A	PROGRAM DIRECTOR I
CARMAN, STEPHANIE A	SECTION COORDINATOR
FOLEY, BRIAN R.	WEB ADMINISTRATOR
ROBLEDO, KRISTINA M	SECTION COORDINATOR
MULLEN, MICHAEL C	SECTION COORDINATOR
BUELTER, JOHN A	SECTION COORDINATOR
AVILA, VICTORIA	SR ADMINISTRATIVE ASSISTANT
CASTILLO, ANA	ADMINISTRATIVE ASSISTANT II
TSAI, ANNIE	ADMINISTRATIVE ASSISTANT II

Following the public disclosure of this draft agreement, the State Bar will request that each individual employee listed above notify the State Bar whether he or she would elect to become a Leased Employee under this Agreement if executed and the State Bar will promptly share that information with CLA.